

1 ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
2 BRITTNEY R. GLOVER, ESQ.
Nevada Bar No. 15412
3 **EGLET ADAMS**
400 South 7th Street, 4th Floor
4 Las Vegas, Nevada 89101
Telephone: (702) 450-5400
5 Facsimile: (702) 450-5451
Email: eservice@egletlaw.com

6 - and -

7 THEODORE PARKER, III, ESQ.
Nevada Bar No. 4716
8 **PARKER, NELSON & ASSOCIATES, CHTD.**
2460 Professional Court, Suite 200
9 Las Vegas, NV 89128
Telephone: 702-868-8000
10 Fax: 702-868-8001
E-Mail: tparker@pnalaw.net
11 *Attorneys for Plaintiffs Jennifer Wyman,*
12 *Bear Wyman, and the Estate of Charles Wyman*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 WESCO INSURANCE COMPANY, as subrogee
16 of its insured, NICKELS AND DIMES
17 INCORPORATED,

18 Plaintiff,

19 vs.

20 SMART INDUSTRIES CORPORATION d/b/a
21 SMART INDUSTRIES CORP, MFG, an Iowa
22 corporation,

23 Defendants.

Case No. 2:16-cv-01206-JCM-NJK

STIPULATION AND ORDER TO
CONTINUE TRIAL (Second Request)



JENNIFER WYMAN, individually; BEAR WYMAN, a minor, by and through his natural parent JENNIFER WYMAN; JENNIFER WYMAN and VIVIAN SOOF, as Joint Special Administrators of the ESTATE OF CHARLES WYMAN; and SARA RODRIGUEZ, natural parent and guardian ad litem of JACOB WYMAN,

Plaintiffs,

vs.

SMART INDUSTRIES CORPORATION, d/b/a SMART INDUSTRIES CORP., MFG, an Iowa corporation, HI-TECH SECURITY INC., a Nevada corporation; WILLIAM ROSEBERRY; BOULEVARD VENTURES, LLC, a Nevada corporation; DOES I thought V; DOES 1 thought 10; BUSINESS ENTITIES I through V; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

HI-TECH SECURITY, INC; and WILLIAM ROSEBERRY,

Third-Party Plaintiffs,

vs.

NICKELS AND DIMES INCORPORATED,

Third-Party Defendant.

CONSOLIDATED WITH
Case No. 2:16-cv-02378-JCM-CWH

STIPULATION AND ORDER TO CONTINUE TRIAL (Second Request)

COMES NOW, JENNIFER WYMAN, BEAR WYMAN, and THE ESTATE OF CHARLES WYMAN (hereinafter the "Plaintiffs") by and through their attorneys of record, Robert T. Eglet, Esq. and Brittney R. Glover, Esq., of the law firm of EGLET ADAMS and

1 Theodore Parker, III, Esq. of PARKER, NELSON & ASSOCIATES, CHTD; Plaintiffs, SARA
2 RODRIGUEZ parent and guardian of JACOB WYMAN, by and through their counsel of record,
3 Cliff W. Marcek, Esq. and Thomas Schwartz, Esq.; SMART INDUSTRIES CORPORATION,
4 by and through its attorney of record, William H. Pruitt, Esq. and Joseph R. Meservy, Esq. of
5 BARRON & PRUITT; and WESCO INSURANCE COMPANY, by and through its attorney of
6 record, Peter Dubowsky, Esq. of DUBOWSKY LAW OFFICE, and hereby agree and stipulate
7 to continue the **September 12, 2022** trial date in this matter to this Court's **February 27, 2023**
8 trial stack due to the unavailability of Plaintiffs' liability expert, E.P. Hamilton, III, Ph.D., P.E.

9
10 On January 19, 2022, the parties submitted their Joint Pretrial Order. *See* ECF No. 358.
11 On February 3, 2022, this Court granted the parties Joint Pretrial Order and set this case for jury
12 trial on the stacked calendar on September 12, 2022. *See* ECF No. 361. The Calendar Call in this
13 matter is set to be held on September 7, 2022 at 1:30 p.m. *Id.*

14 The parties respectfully request that the September 12, 2022 trial date in this matter be
15 continued to this Court's February 27, 2023 trial stack. The Wyman Plaintiffs recently discovered
16 that their liability expert, E.P. Hamilton, III, Ph.D., P.E., will not be available until September
17 19, 2022 to meet with Plaintiffs' counsel. *See* Affidavit of Deborah R. Black, attached as **Exhibit**
18 **"1."** As such, Dr. Hamilton will be unavailable to testify at the September 12, 2022 trial. *Id.*
19 Moreover, as this trial is anticipated to last twenty-one (21) days, the September 12, 2022 trial
20 stack conflicts with counsel for Wesco, Peter Dubowsky's, Jewish holidays, which begin on
21 September 23, 2022.

22 In the interests of fairness and justice and for good cause shown, the parties request a
23 continuance of the September 12, 2022 trial date until this Court's February 27, 2023 trial stack.
24 This request is not made for the purposes of undue delay and is brought in good faith. In light of
25 the foregoing, and in an attempt to avoid prejudicing all parties involved, the parties hereby
26 stipulate to continue the trial date in this matter from September 12, 2022 to this Court's February
27 27, 2023 trial stack. The parties further respectfully request that the motion in limine deadline be
28

extended in accordance with the new trial date pursuant to LR 16-3.

Respectfully submitted by:

Approved as to Form and Content by:

DATED this 12th day of August, 2022.

DATED this 12th day of August, 2022.

/s/ Brittney R. Glover, Esq.

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

BRITTNEY R. GLOVER, ESQ.

Nevada Bar No. 15412

EGLET ADAMS

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

JENNIFER WYMAN, BEAR WYMAN; and

ESTATE OF CHARLES WYMAN

/s/ Joseph R. Meservy, Esq.

WILLIAM H. PRUITT, ESQ.

Nevada Bar No. 6783

JOSEPH R. MESERVY, ESQ.

Nevada Bar No. 14088

BARRON & PRUITT, LLP

3890 West Ann Road

North Las Vegas, Nevada 89031

Attorneys for Defendant

SMART INDUSTRIES CORPORATION

DATED this 12th day of August, 2022.

DATED this 12th day of August, 2022.

/s/ Cliff W. Marcek, Esq.

CLIFF W. MARCEK, ESQ.

Nevada Bar No. 5061

CLIFF W. MARCEK, P.C.

411 E. Bonneville Ave.

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

SARA RODRIQUEZ, parent and guardian

Of JACOB WYMAN

/s/ Peter Dubowsky, Esq.

PETER DUBOSWKY, ESQ.

Nevada Bar No. 4972

DUBOWSKY LAW OFFICE, CHTD

300 South Fourth Street, Suite 1020

Las Vegas, Nevada 89101

Attorneys for WESCO INSURANCE CO.

EGLET ADAMS

ORDER

Based upon the Stipulation of the parties hereto, and for good cause, IT IS HEREBY ORDERED, that the trial date in this matter is continued from September 12, 2022 to **February 27, 2023, at 9:00 a.m.** The Calendar call currently set for September 7, 2022, is continued to **February 22, 2023 at 1:30 p.m.**

IT IS FURTHER ORDERED that the motion in limine deadline is extended in accordance with the new trial date pursuant to LR 16-3.

DATED August 15, 2022.


UNITED STATES DISTRICT JUDGE

From: [Peter Dubowsky](#)
To: [Brittney Glover](#)
Cc: [Joseph R. Meservy](#); [Cliff Marcek](#); [Bianca Marx](#)
Subject: Re: Wyman, et. al. v. Smart - SAO Continue Trial
Date: Friday, August 12, 2022 12:05:20 PM
Attachments: [uc.png](#)

You may affix my signature.

Peter Dubowsky, Esq.
DUBOWSKY LAW OFFICE, CHTD.
300 South Fourth Street
10th Floor- Suite 1020
Las Vegas, NV 89101
Ph. (702) 360.3500
Fx. (702) 360.3515
www.dubowskylaw.com



On Aug 12, 2022, at 11:59 AM, Brittney Glover <bglover@egletlaw.com> wrote:

<WYMAN 20220812 SAO Continue Trial.docx>

From: Cliff Marcek
To: Brittney Glover; Joseph Meservy; Peter Dubowsky
Cc: Bianca Marx
Subject: RE: Wyman, et. al. v. Smart - SAO Continue Trial
Date: Friday, August 12, 2022 12:43:30 PM
Attachments: [image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)

You can affix my signature.

CLIFF W. MARCEK, P.C.
411 E. Bonneville, Suite 390
Las Vegas, NV 89101
Telephone: (702) 366-7076
Facsimile: (702) 366-7078
Email: cwmarcek@marceklaw.com (Firm)
Board Certified Personal Injury Law Specialist
American Association of Justice
Past President – Nevada Justice Association
Million Dollar Advocates Forum
The National Trial Lawyers Top 100 Trial Lawyers (2008,2014)
The American Society of Legal Advocates
Keenan Trial Institute



DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 366-7076 and ask to speak to the sender of the communication. Also, please e-mail the sender and notify the sender immediately that you have received the communication in error.

From: Brittney Glover <bglover@egletlaw.com>
Sent: Friday, August 12, 2022 12:00 PM
To: Joseph Meservy <jmeservy@lvnlaw.com>; Peter Dubowsky <peter@dubowskylaw.com>; Cliff Marcek <cwmarcek@marceklaw.com>
Cc: Bianca Marx <bmarx@egletlaw.com>
Subject: Wyman, et. al. v. Smart - SAO Continue Trial

Counsel,

It is my understanding that all parties have agreed to request a continuance of the trial date in this matter. Please find attached the SAO to Continue the September 12, 2022 trial date until the February 27, 2023 trial date. Please review for form and content and let me know if you have any changes, or if we may affix your e-signature and submit to Chambers.

Thank you.



Brittney R. Glover, Esq
p: (702) 450-5400
w: www.egletlaw.com
a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101
A row of three small social media icons: Facebook, LinkedIn, and Twitter.

This transmission (including any attachments) may contain confidential information, privileged material (including material protected by the solicitor-client or other applicable privileges), or constitute non-public information. Any use of this information by anyone other than the intended recipient is prohibited. If you have received this transmission in error, please immediately reply to the sender and delete this information from your system. Use, dissemination, distribution, or reproduction of this transmission by unintended recipients is not authorized and may be unlawful.

From: Brittney Glover
To: Joseph Meservy; Cliff Marcek; Peter Dubowsky
Cc: Bianca Marx
Subject: RE: Wyman, et. al. v. Smart - SAO Continue Trial
Date: Friday, August 12, 2022 3:08:00 PM
Attachments: WYMAN 20220812 SAO Continue Trial.docx
image004.png
image005.png
image006.png
image007.png
image008.png
image009.png



Brittney R. Glover, Esq.
p: (702) 450-5400
w: www.egletlaw.com
a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101
f i n t

This transmission (including any attachments) may contain confidential information, privileged material (including material protected by the solicitor-client or other applicable privileges), or constitute non-public information. Any use of this information by anyone other than the intended recipient is prohibited. If you have received this transmission in error, please immediately reply to the sender and delete this information from your system. Use, dissemination, distribution, or reproduction of this transmission by unintended recipients is not authorized and may be unlawful.

From: Joseph Meservy <JMeservy@lvnlaw.com>
Sent: Friday, August 12, 2022 2:59 PM
To: Cliff Marcek <cwmarcek@marceklaw.com>; Brittney Glover <bglover@egletlaw.com>; Peter Dubowsky <peter@dubowskylaw.com>
Cc: Bianca Marx <bmarx@egletlaw.com>
Subject: RE: Wyman, et. al. v. Smart - SAO Continue Trial

With my minor proposed edits, you may affix my e-signature and submit.

Sincerely,
Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
L A W Y E R S

This transmission and any attached files are privileged, confidential or otherwise the exclusive property of the intended recipient or the law firm of Barron & Pruitt, LLP. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is strictly prohibited. If you have received this transmission in error, please contact us immediately by e-mail by hitting reply or telephone (702) 870-3940 and promptly destroy the original transmission and its attachments.

From: Joseph Meservy
Sent: Friday, August 12, 2022 2:15 PM
To: 'Cliff Marcek' <cwmarcek@marceklaw.com>; Brittney Glover <bglover@egletlaw.com>; Peter Dubowsky <peter@dubowskylaw.com>
Cc: Bianca Marx <bmarx@egletlaw.com>
Subject: RE: Wyman, et. al. v. Smart - SAO Continue Trial

Hi All,

I have a couple very minor edits to suggest and am just waiting on Bill (who is in trial) to confirm that the date proposed works for us. I hope to have that answer by tonight.

The edits: (1) Please substitute WILLIAM H. PRUITT, ESQ. (Bar No. 6783) for David Barron, Esq. in the signature block; (2) I believe Amanda Vogler-Heaton, Esq. is no longer with Dubowsky Law Office, Chtd., right? If so, probably best to remove her from the signature block as well.; (3) On page 3:19-20, there length of trial is listed as "up to three weeks" but we informed the Court trial would be "21 days" in the Joint Pretrial Order, and I would prefer using that language.

Sincerely,
Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
L A W Y E R S

This transmission and any attached files are privileged, confidential or otherwise the exclusive property of the intended recipient or the law firm of Barron & Pruitt, LLP. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is strictly prohibited. If you have received this transmission in error, please contact us immediately by e-mail by hitting reply or telephone (702) 870-3940 and promptly destroy the original transmission and its attachments.

From: Cliff Marcek [<mailto:cwmarcek@marceklaw.com>]
Sent: Friday, August 12, 2022 12:43 PM
To: Brittney Glover <bglover@egletlaw.com>; Joseph Meservy <JMeservy@lvnlaw.com>; Peter Dubowsky <peter@dubowskylaw.com>
Cc: Bianca Marx <bmarx@egletlaw.com>

Exhibit “1”

**AFFIDAVIT OF DEBORAH R. BLACK IN SUPPORT OF STIPULATION AND
ORDER TO CONTINUE TRIAL**

STATE OF TEXAS)
) SS:
COUNTY OF TRAVIS)

I, DEBORAH R. BLACK, being duly sworn, states and declares as follows:

1. I am over the age of eighteen (18) and a citizen of the United States of America. I have personal knowledge of the following and if called as a witness I could, and would, competently testify as follows:

2. I am the Vice-President of Hamilton & Associates, and I am the individual responsible for managing E.P. Hamilton III, Ph.D., P.E.'s calendaring, scheduling, and general availability.

3. Dr. Hamilton is currently out of the country until August 30, 2022.

4. Upon his return, Dr. Hamilton will not be available until September 19, 2022 to meet with Plaintiffs' counsel.

5. Unfortunately, Dr. Hamilton will be unavailable to testify at the September 12, 2022 trial.

6. Dr. Hamilton has the ability to make himself available for trial purposes during the first two weeks of March 2023.

7. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT

DATED this 12th day of August, 2022.



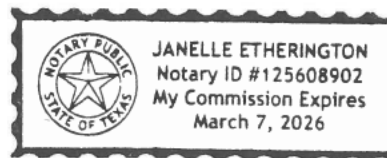
DEBORAH R. BLACK

SUBSCRIBED and SWORN to BEFORE

me this 12 day of August, 2022.



NOTARY PUBLIC



WESCO INSURANCE COMPANY
vs. SMART INDUSTRIES CORPORATION
(U.S. District Court Case No. Case No. 2:16-cv-01206-JCM-NJK)

PLAINTIFFS JENNIFER WYMAN,
BEAR WYMAN, AND THE ESTATE OF
CHARLES WYMAN'S STIPULATION AND
ORDER TO CONTINUE TRIAL

EXHIBIT 1

AFFIDAVIT

**AFFIDAVIT OF DEBORAH R. BLACK IN SUPPORT OF STIPULATION AND
ORDER TO CONTINUE TRIAL**

STATE OF TEXAS)
)
COUNTY OF TRAVIS) SS:

I, DEBORAH R. BLACK, being duly sworn, states and declares as follows:

1. I am over the age of eighteen (18) and a citizen of the United States of America. I have personal knowledge of the following and if called as a witness I could, and would, competently testify as follows:

2. I am the Vice-President of Hamilton & Associates, and I am the individual responsible for managing E.P. Hamilton III, Ph.D., P.E.'s calendaring, scheduling, and general availability.

3. Dr. Hamilton is currently out of the country until August 30, 2022.

4. Upon his return, Dr. Hamilton will not be available until September 19, 2022 to meet with Plaintiffs' counsel.

5. Unfortunately, Dr. Hamilton will be unavailable to testify at the September 12, 2022 trial.

6. Dr. Hamilton has the ability to make himself available for trial purposes during the first two weeks of March 2023.

7. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT

DATED this 12th day of August, 2022.



DEBORAH R. BLACK

SUBSCRIBED and SWORN to BEFORE

me this 12 day of August, 2022.



NOTARY PUBLIC

